

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

UNITED STATES OF AMERICA,)	
)	
)	
)	5:19-CR-479-1D
vs.)	
)	
EMILIO R. MORAN,)	
Defendant.)	
)	

AUGUST 4, 2021
SENTENCING HEARING
BEFORE THE HONORABLE JAMES C. DEVER III
UNITED STATES DISTRICT JUDGE

APPEARANCES:

On Behalf of the Government:

JOHN PARRIS, ASSISTANT U.S. ATTORNEY
U.S. Attorney's Office
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Raleigh, North Carolina 27601

On Behalf of the Defendant:

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AMY M. CONDON, CRR, RPR, CSR
Official Court Reporter
United States District Court
Raleigh, North Carolina
Stenotype with computer-aided transcription

1 (Wednesday, August 4, 2021, commencing at 2:10 p.m.)

2 P R O C E E D I N G S

3 THE COURT: We'll next take up the sentencing of
4 Emilio Moran.

5 (Pause in the proceeding.)

6 MS. SALMON: Your Honor, if Mr. Parris tried to
7 contact me, my phone is in my car in the parking lot, so I do
8 not know. He may have, and I just don't know. But it's been
9 in the car since about 1:30.

10 THE COURT: Thank you.

11 (Pause in the proceeding.)

12 MS. SALMON: Your Honor, this is my client's family.

13 (Pause in the proceeding.)

14 MR. PARRIS: I feel I need to apologize to the
15 Court, Your Honor. It was my understanding it was at 2:30 in
16 my last notice. I apologize if that was not correct.

17 THE COURT: I was just looking at the CM/ECF notice
18 that went to your office on July 9th, 2021, that set this
19 hearing for 2:00 o'clock.

20 MR. PARRIS: I profusely apologize. That is my
21 fault. I had entered it in my system at 2:30, and that was
22 obviously my error. And I greatly apologize, Your Honor, for
23 that. And that is all my responsibility, not co-counsel or
24 the Government agent present.

25 THE COURT: Do better.

1 MR. PARRIS: Yes, Your Honor.

2 THE COURT: Because there are a lot of people that
3 get together and not just about my time. The court reporter
4 is here. Deputy clerk is here. The marshals are here. Your
5 opposing counsel is here. The defendant is here. Victims can
6 be here. Family can be here.

7 All right.

8 At this time we'll take up the sentencing of Emilio
9 Moran.

10 Ms. Salmon, are you and the defendant ready to
11 proceed?

12 MS. SALMON: Yes, Your Honor, we're ready.

13 THE COURT: Is the Government ready?

14 MR. PARRIS: Yes, Your Honor.

15 THE COURT: At this time I'd ask that the defendant
16 be sworn or affirmed.

17 (The defendant, Emilio Moran, was duly sworn.)

18 THE COURT: Mr. Moran, do you understand that having
19 been sworn, that your answers to my questions are subject to
20 the penalty of perjury; and if you were to lie to me, you
21 could be prosecuted for perjury or for making a false
22 statement?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Have you taken any kind of medicine or
25 any other substance in the last 48 hours that would affect

1 your ability to hear and understand this proceeding?

2 THE DEFENDANT: No, sir.

3 THE COURT: Do you know why you're here today?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Ms. Salmon, do you have any reason to
6 doubt Mr. Moran's competence to go forward today?

7 MS. SALMON: No, Your Honor.

8 THE COURT: Does the Government have any reason to
9 doubt Mr. Moran's competence to go forward today?

10 MR. PARRIS: No, Your Honor.

11 THE COURT: Based on Mr. Moran's answers to my
12 questions, my observations of him and the answers from
13 counsel, I find that he is competent.

14 Mr. Moran, you're here today having entered a plea
15 of guilty to two charges. Count 2 is sexual abuse of a minor.
16 Count 3 is enticement of a minor. You entered a plea of
17 guilty to those two charges pursuant to a plea agreement. I
18 hereby accept the plea agreement.

19 The sentencing guidelines are no longer mandatory;
20 they're advisory. Nevertheless, I'm to take into account the
21 now-advisory guidelines.

22 I do this by initially making findings of fact and
23 calculating an advisory guideline range. I'll then consider
24 any motion that might be made that might move that range
25 either up or down. I'll then consider all arguments that your

1 lawyer makes, any statement you'd like to make, any victim
2 allocution and the arguments of the Assistant United States
3 Attorney. I'll then determine your sentence, and I'll
4 announce it here in court today. That'll be the process we'll
5 follow.

6 Ms. Salmon, did you receive a copy of the
7 presentence report?

8 MS. SALMON: Yes, Your Honor.

9 THE COURT: Mr. Moran, did you speak with your
10 lawyer, Ms. Salmon, about the presentence report?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: At this time the Court directs that the
13 presentence report be placed in the record under seal.

14 In accordance with Rule 32 of the Federal Rules of
15 Criminal Procedure, the Court accepts as accurate the
16 presentence report, except as to matters in dispute as set
17 forth in the addendum.

18 I have reviewed the entire report, including the
19 addendum. The addendum does contain a number of objections.

20 Ms. Salmon, does Mr. Moran want to be heard on
21 those?

22 MS. SALMON: Your Honor, the defense does persist in
23 those objections, and I'd only like to address the cross
24 reference for purposes of the record.

25 THE COURT: Okay.

1 MS. SALMON: Your Honor, those objections are fully
2 set forth incorrectly in the addendum and in the filed PSR
3 objections.

4 Your Honor, the defense is familiar with Fourth
5 Circuit case law in this area, including *United States versus*
6 *Cox*, the Fourth Circuit case which applies the broad language
7 that's contained in 2G2.1 and the commentary notes. It says
8 that it should apply broadly.

9 However, Your Honor, we submit that *Cox* should not
10 be read to apply the cross references in all enticement cases
11 and in all instances. And we submit, Your Honor, that in this
12 case, it should not. To the extent that *Cox* can be read in
13 that manner, we would submit that *Cox* was wrongly decided.

14 Your Honor, the conduct in this case is outside the
15 heartland of the 2G2.1 cross reference. The objection to this
16 as a legal matter is twofold.

17 Your Honor, the defense admits that the language is
18 sufficiently broad as set forth in the guidelines; that it
19 could be read to encompass any enticement case. There is a
20 myriad of case law related to sentencing issues in this
21 circuit which say if an enhancement applies to the elements in
22 every case of offense, then it's no longer an enhancement.
23 It's just the Sentencing Guidelines Commission grafting
24 additional punishment on for every statutory sentence.

25 In my practice most often came up, Your Honor, in

1 the risk of substantial injury and human health and
2 environment in the home cooked meth cases where there was
3 quite a while when that was applying to every home cooked meth
4 case until the Fourth Circuit came back and made a correction
5 and said: No, it has to be something outside the heartland of
6 those cases in order for the enhancement to be appropriately
7 applied.

8 Your Honor, to the extent that *Cox* can be read to
9 apply the cross reference to all cases where the defendant has
10 pled to enticement, we would submit that that does violate the
11 principles in sentencing that enhancements should not be
12 applied in that fashion.

13 But, Your Honor, ultimately, with *United States v.*
14 *Cox* being controlling precedent, the defense simply submits
15 that this case -- the facts of this case are not within the
16 heartland of the cross reference and its appropriate
17 application and should not be applied in this case.

18 THE COURT: Thank you.

19 Mr. Parris.

20 MR. PARRIS: Your Honor, the probation officer's
21 response is spot on in this case in applying this cross
22 reference. And we offer that the guidelines do take in effect
23 and would apply to the facts of this case.

24 And I know the Court has read the probation
25 officer's response, but in particular, it would be on page 19

1 of the PSR, including the responses. Specifically the
2 language of the fact that in September of 2018, the defendant
3 would pick the minor up in school, and they would engage in
4 sexual acts in the defendant's car.

5 During the investigation, agents recovered the
6 minor's phone. Two videos depicting sexual acts between the
7 defendant and her were found and screen captures. They also
8 found the line chats between the victim in this case and the
9 defendant, specifically the line chats where the defendant
10 says: I want more pictures or pics of you. I want to be able
11 to see us in our intimacy. I want to even make videos. And
12 that's where the cross reference applies. They are in a --
13 performing sex acts regularly during the six-month period.
14 And at this point, he's enticing to create videos of them in
15 sex acts.

16 And based on that evidence alone, that should be
17 enough to apply that cross reference because it is enticement
18 for the purposes of making what would be child porn under the
19 definition of the statute. So we believe the probation
20 officer's response is thorough and accurate, and we believe
21 that the cross reference does apply.

22 THE COURT: Thank you.

23 (Pause in the proceeding.)

24 THE COURT: In connection with the objections in the
25 PSR, I have reviewed the probation officer's response. I do

1 think probation accurately responded, and I recognize Ms.
2 Salmon's argument about Fourth Circuit cases. I have some
3 other cases to mention in connection with some of these
4 objections.

5 The first objection is a factual objection that
6 doesn't affect the advisory guideline range, and I think
7 probation actually corrected it having to do with the timing
8 of the age of the victim.

9 The second objection is another factual objection,
10 and I think probation properly included the information under
11 3661, and the report accurately reflects what the defendant
12 pleaded guilty to as part of the court martial and the
13 reference in paragraph 28.

14 As for the third objection, this cross reference
15 objection, I do think probation properly applied this in
16 connection with the language. There's also additional cases
17 from outside, both within and outside the Fourth Circuit that
18 I think help inform the correctness of the decision of
19 probation and the recommendation of probation.

20 In *U.S. v. Korfhage*, 683 F.App'x 888, 892 (11th Cir.
21 2017), the 11th Circuit noted that the cross reference applies
22 where one of defendant's purposes in enticing the victim was
23 to produce a visual depiction of the conduct, engaging in
24 sexual activity with a minor, and taking photographs is
25 sufficient to apply the cross reference according to 11th

1 Circuit. In that case it was a defendant who took a minor to
2 a hotel and took 17 pornographic images, and that was
3 sufficient to support the cross reference.

4 Seeking sexual images from a victim via text message
5 supports the cross reference. See *United States v. Liebert*,
6 554 F.App'x 173, 173 and 174. Sending sexually charged text
7 messages concerning receipt of such messages is also
8 sufficient. *United States v. Dye*, 2010 WL 4146187 (3d Cir.
9 2010).

10 Here, the Court does find that the record shows
11 Moran enticed the victim to engage in sexual conduct with him
12 where one of the purposes was producing images of such
13 conduct. He initiated the romantic relationship with the
14 victim via text message.

15 Ultimately, as Mr. Parris noted and as the record
16 makes clear, agents recovered a multitude of images, including
17 two videos and four images depicting the victim performing
18 oral sex on the defendant and four images showing the victim
19 and Moran engaging in intercourse. Recovered chats include a
20 photo of the victim wearing underwear and a T-shirt that she
21 sent to Moran. Moran asking the victim to send him a picture
22 of his penis inside her vagina and telling the victim: I want
23 more pics of you. I want to see us in our intimacy. I want
24 to make videos. Probation properly scored it.

25 As for the fourth objection and the fifth objection,

1 they just kind of build on the cross reference. And
2 probation, I think, properly scored that.

3 As for the sixth objection to paragraph 63,
4 probation properly scores it and applies the enhancement if
5 the defendant causes the distribution of such material.
6 Section 2G2.1(b)(3) provides a two-level enhancement where the
7 defendant knowingly engaged in distribution. Distribution is
8 defined in Comment Note 1 to mean any act, including
9 possession with intent to distribute, production,
10 transmission, advertisement and transportation related to the
11 transfer of material involving sex exploitation of a minor. A
12 defendant engages in knowing distribution when he knowingly
13 commits the distribution, aids, abets, counsels, commands,
14 induces, procures or willfully causes the distribution or
15 conspires to distribute.

16 When a defendant takes a picture of himself and his
17 minor victim having sex and then sends the picture to the
18 victim, he engages in distribution and the enhancement
19 applies. See *U.S. v. Hernandez*, 894 F.3d 1104 at 1107-1109
20 (9th Cir. 2018). Conversely, when a defendant causes a victim
21 to send him the same pictures of similar conduct, he causes
22 another to engage in distribution of child pornography. See
23 *United States v. Broxmeyer*, 699 F.3d 265, 282-283 (2d Cir.
24 2012).

25 Here, I think probation properly noted that Moran

1 asked the victim to send him pictures she had on her phone of
2 them having a vaginal -- engaging in vaginal intercourse,
3 which the victim sent to Moran on August 23rd, 2018, and I do
4 think probation properly scored that.

5 The seventh objection is an objection to the
6 two-level enhancement under 2G2.1(b)(6)(B) for computer use.
7 Again, smart phone counts as a computer. See *United States v.*
8 *Mathis*, 767 F.3d 1264, 1269-70. It was abrogated on other
9 grounds by *Lockhart*, 577 U.S. 347 (2016), but it does qualify,
10 and I think probation properly scored it -- he definitely used
11 text messages to persuade, induce, entice or coerce the victim
12 to take and send him sexually explicit pictures, not merely to
13 send an existing picture.

14 As for the eighth objection, the objection to the
15 five-level enhancement under 4B1.5(b)(1), I think probation
16 properly scores that. And in *United States v. Fox*, 926 F.3d
17 1275, 1279-81 (11th Cir. 2019), the 11th Circuit held that
18 repeated abuse of the same victim counts as "at least two
19 separate occasions" for purposes of the enhancement. The
20 enticement count says prohibited sexual conduct as it's
21 prohibited by Chapter 117 and is an offense covered under
22 Section 2426(b)(1)(A).

23 Moran definitely enticed the victim on more than one
24 occasion. He took her to a hotel where they engaged in sexual
25 intercourse and took her to an Airbnb where they engaged in

1 sexual intercourse. They took sexually explicit pictures and
2 videos which does constitute production of child pornography.
3 Probation did properly score it.

4 As for the ninth objection, it's a cumulative
5 objection.

6 So all the guideline objections are preserved. But
7 for purposes of *Booker* and its progeny, the total offense
8 level is 43. The criminal history category is II. The
9 advisory guideline range for a 43 and a II is life
10 imprisonment.

11 Obviously, there's a statutory maximum on Count 2 of
12 15 years, but the statutory maximum on Count 3 is life.

13 So with the objections preserved, you agree, Ms.
14 Salmon, that a 43 and II yields an advisory guideline range of
15 life?

16 MS. SALMON: Yes, your Honor.

17 THE COURT: And the Government agrees that the
18 advisory guideline range is life?

19 MR. PARRIS: Yes, Your Honor.

20 THE COURT: I'll hear first from Ms. Salmon on the
21 3553(a) factors. Then I'll hear from the defendant. Then
22 I'll hear any victim allocution. Then I'll hear from Mr.
23 Parris.

24 I have received and reviewed all the letters you
25 submitted, Ms. Salmon. I appreciate the time it took for

1 people to write. And I also have reviewed the forensic report
2 that you submitted in this case.

3 MS. SALMON: Thank you, Your Honor.

4 As an administrative matter, we'd ask that
5 Dr. Hastings' report be admitted into the record for -- under
6 seal for purposes of this sentencing hearing.

7 THE COURT: It'll be received. It's at Docket
8 Entry 64. It's on the docket under seal, but it'll be
9 received.

10 MS. SALMON: Thank you, Your Honor.

11 Your Honor, the defense has submitted a motion for a
12 downward variant sentence. And in that motion, we have
13 requested that the Court impose a 120-month sentence in this
14 case. And, Your Honor, for the reasons that I'm about to
15 address, including the 3553(a) factors, leaning heavily on
16 Dr. Hastings' very thorough and insightful report, we would
17 submit that considering the totality of the circumstances and
18 Mr. Moran as the individual that he is, that a sentence not
19 to -- any -- the range above which the sentence would become
20 unreasonable, Your Honor, would be 15 years. We think that
21 anything above 15 years we respectfully submit would be
22 greater than necessary to fulfill the purposes of sentencing.

23 Your Honor, the guideline range is life. And as we
24 set forth in our motion and as the Supreme Court well
25 articulated in the *Graham* case, life sentences are reserved in

1 our system for the worst offenders that come before us;
2 individuals whom the system has said there is no more that can
3 be done; that there is no hope of rehabilitation; and that
4 just punishment and the protection of society require that
5 this individual never leaves incarceration again.

6 And, Your Honor, when you take stock of the entire
7 personhood and life story of Emilio Moran, the defense submits
8 this case is exactly why *Gall* stands for the proposition that
9 the guidelines cannot even be presumed to be reasonable.

10 In this case, a life guideline range is so far
11 extreme from the 3553(a) factors that Congress has set forth
12 for the following reasons. I'll begin with the history and
13 characteristics of this defendant.

14 And, Your Honor, I know that you read everything
15 that was submitted, so I'm not going to read anything, and I'm
16 not going to go on and on. But for purposes of emphasis and
17 for Mr. Moran's purpose as he sits here on this very important
18 day, I do want to highlight these things.

19 Mr. Moran has given most of his adult life in
20 service to our country as a United States Marine. My brother
21 was a Navy pilot. I have a lot of family members who were in
22 service. And I know that even in the armed forces, the
23 Marines carry special significance for their duty, their honor
24 and their commitment to the country. My brother would
25 sometimes jokingly say that the Navy just gives the Marines a

1 ride. And I think that that was his nice way of saying that
2 they were on the front lines of everything. And the people
3 that stand up for our country and be Marines know that they're
4 putting their lives every day at risk for all of us. And
5 Mr. Moran was a very successful Marine.

6 I represent a lot of service members, and many of
7 them find their way to service and to enlistment out of
8 troubled childhoods. A lot of those enlisted service members
9 don't have the success that he had as a Marine. He overcame a
10 tumultuous abusive childhood, coming out of poverty, coming
11 out of a central South American country, and graduated high
12 school, looked around and chose service. Kept himself out of
13 trouble and rose above it.

14 And through his career as a Marine, I think it's
15 very clear from Dr. Hastings' report that being a Marine gave
16 Emilio a tremendous amount of life purpose. It gave him a
17 feeling of honor. It gave him a feeling of service. He had
18 the rewards of knowing that he was doing something that was
19 greater than himself. He also had the reward of knowing he
20 could provide for his family financially, which I think in a
21 more traditional note -- I'm sorry, more traditional
22 conception of what fatherhood means; that he thought that that
23 was the most important thing that he could do was be there to
24 financially support them and be this strong Marine provider.

25 Unfortunately, Your Honor, the nature -- I'm sorry,

1 the history and characteristics of this defendant also involve
2 a near fatal IED blast in 2007 when he was the machine gunner
3 in a Humvee near Jalalabad during his second deployment. It
4 was an extended deployment, and the story is extremely
5 disturbing. But they hit an explosive, and that's the last
6 thing that Emilio remembers before he woke up in a hospital
7 fighting for his life. If you look at his face, you can
8 actually see where the scars are from all of his stitches. I
9 think the PSR and Dr. Hastings' report says he got 32 stitches
10 to his head, and his body was broken, as you might imagine.

11 When he came back in 2007, the physical injuries
12 were healing. The mental injuries and the mental trauma was
13 not addressed. The United States military, Your Honor, in my
14 practice and in the general conversation about this, has come
15 a long way during the Afghanistan war and how they are
16 addressing mental health, trauma that our enlisted individuals
17 are serving abroad.

18 He had post-traumatic stress disorder, but he was
19 returned to service. He did not have the opportunity to
20 receive any sort of intensive cognitive behavioral therapy.
21 And as Dr. Hastings' report correctly notes, the traumatic
22 brain injury, the post-traumatic stress disorder, the
23 accompanying major depressive disorder and secondary substance
24 abuse, all of these things join together and make a very
25 emotionally susceptible reactive situation for a service

1 member who returns in this way, and that was the case for
2 Emilio. He never received that needed treatment.

3 Now, that's his history and characteristics up to
4 that point. Mr. Moran is joined with a very supportive
5 family, and they're here, and also friends that are sitting in
6 the second and third row. They have traveled from far
7 distances to be here, Your Honor, and show their support for
8 him.

9 So his history and characteristics also include
10 something that we do not often see in life guideline cases,
11 and that's two rows of people that are willing to say that
12 they stand beside him and are here to help him through what
13 will certainly be an extended prison sentence, but to
14 hopefully see him on the other side, embrace him and help him
15 to go forward and work on becoming the person that he wants to
16 be.

17 He will address Your Honor in a moment. Emilio told
18 me that he very much enjoyed his time with Dr. Hastings. That
19 that seven to eight hours that Dr. Hastings spent with him in
20 the Harnett County jail was the first time that he had ever
21 had the opportunity to sit down and talk through this very
22 complex, both mental and physical, health picture with a
23 doctor, with a neuropsychiatrist, with a person who's trained
24 to understand and can help him to understand how the physical
25 and the emotional and mental injuries have come to this place

1 and what he needs to do going forward.

2 Mr. Moran is receptive and welcoming of the
3 therapeutic options that the Bureau of Prisons will offer him.
4 He intends to take full opportunity to engage in those because
5 Mr. Moran's primary goal is to come out of prison when the
6 sentence Your Honor will impose is over and be the father that
7 his children deserve and the husband that his wife, Lavenia,
8 who is sitting here in the courtroom today, so much deserves.

9 And it is that hurt for them and for the victim in
10 this case, Your Honor, that I believe haunt Mr. Moran the
11 most. I do submit, Your Honor, that he has done what the
12 system asks of him. He has accepted responsibility. He took
13 a plea agreement knowing that there may be a life guideline
14 range. He didn't go to trial. He didn't put the victim and
15 her family through that. He took responsibility for it, and
16 here we are. And he is on a journey to try to do whatever he
17 can to atone for these mistakes and to come out on the other
18 side of this the person of honor that he set himself up to be
19 through his decades as a Marine.

20 Your Honor, he has 28 commendations, two combat
21 ribbons and a Purple Heart for his service as a Marine at 39
22 years old. He's only a 39-year-old man.

23 Now, I do want to talk as far as history and
24 characteristics of this defendant what Dr. Hastings' report
25 very thoroughly and I think accurately, believably,

1 competently tells us that he is not. Perhaps most
2 importantly, Dr. Hastings found no paraphilic disorder, no
3 indication of sexual deviance as a clinical matter. Even
4 knowing every detail about the offense conduct in this case,
5 Dr. Hastings found he had no paraphilic disorder.

6 He concluded that there was a low risk of recidivism
7 for sexual reoffending for Mr. Moran. He concluded that
8 Mr. Moran was both receptive and likely to be successful if he
9 engaged in cognitive behavioral therapy and counseling. And,
10 Your Honor, the summary begins on page 32 of Dr. Hastings'
11 extensive report. And he anticipated that he would accepting
12 of treatment.

13 Other notable portions of that report that reflect
14 the history and characteristics of Mr. Moran, he found him to
15 be truthful and remorseful. He noted that Mr. Moran
16 accurately reflected to him that while he had made
17 rationalizations during the time of the offense conduct as to
18 why this was okay or to engage in this behavior, he found that
19 Mr. Moran said to him: But I understand why it's wrong. I
20 understand that this is a very young teenage woman and that
21 she is a minor; that I am the person in control, and that
22 that's got the possibility for abuse and manipulation, and I
23 get that now. That wasn't what I was focused at the time, but
24 I get that now.

25 Your Honor, the nature and circumstances of the

1 offense are tragic, wrong, and neither I nor Mr. Moran seek to
2 minimize the seriousness in any respect. It is very, very
3 serious. The context within which this tragic mistake was
4 made, however, cannot be underemphasized.

5 As reflected in Dr. Hastings' report and in our
6 motion, Your Honor, after being discharged from the military
7 for having an extramarital affair, Emilio spent 90 days in the
8 brig. He came out on the other side. And this happens so
9 often, having never had any other job but being a Marine in
10 his entire life, never having any other identity than being a
11 Marine his entire life.

12 So he goes from being, as he said, a golden boy
13 Marine to cleaning toilets. And that's actually what he was
14 doing. He got a job as a janitor. And in this winter of his
15 emotional life, he made the most disastrous, wrong and
16 criminal choice that he has ever made, and, Your Honor, I
17 submit that he could ever be expected to make, because I do
18 not believe he's a risk of recidivism.

19 With that all said, Your Honor, I do want to address
20 the need for just punishment, the need to deter others, avoid
21 any danger to the public. Your Honor, we submit he is not a
22 danger to the public. He's correctly found by Dr. Hastings to
23 be a low risk of recidivism.

24 As far as deterring others, I think a 10- to 15-year
25 sentence would deter anyone from engaging in an inappropriate

1 sexual relationship with a 14 to turning 15-year-old young
2 woman.

3 Your Honor, I submit to you that he is not a danger
4 and that there is no just purpose served with a life sentence
5 in this case. We ask that you show him mercy; that when he
6 speaks to you in a moment and asks you for the same, that you
7 consider that in the context of the totality of the
8 circumstances and take great measure of *Gall's* central
9 holding, which is the guidelines cannot be presumed to be
10 reasonable. We look at this individual man and this specific
11 circumstances, and the defense submits that a sentence in
12 excess of 15 years would be greater than necessary to fulfill
13 the purposes of sentencing.

14 I've gone on longer than I intended to, Your Honor;
15 but if there's any questions, either factually or as to any of
16 the factors that we've addressed that I can answer, I'm happy
17 to do so. Thank you, sir.

18 THE COURT: Thank you.

19 At this time I'll hear from Mr. Moran, if you'd like
20 to make a statement.

21 THE DEFENDANT: Good afternoon, sir. First and
22 foremost, I would like to say that I'm not trying to stand
23 here today and make any excuses for my error in judgment in
24 what I did. I know that was wrong. I deeply regret it, and I
25 accept full responsibility and the punishment that's to come.

1 I would like to apologize to the victim and family
2 for not only betraying their trust, but for the pain, hurt and
3 humiliation that I might have caused them. I pray to God that
4 he can heal their hearts and those damages and allow for
5 forgiveness to take place so that their future -- her future
6 might be rewarding.

7 To my wife, Lavenia, and my family who are here
8 today, I'm also asking for forgiveness. I let circumstances
9 turn me into a man that I was not, and I have brought shame
10 and hurt to you and our family.

11 I have seen this hurt on my kids' faces through the
12 FaceTime visits. I can only imagine the abandonment they felt
13 when they came home and realized that I was not going to be
14 home. And it hurts me so much that I'm not going to be part
15 of those special moments in life, like my son just getting his
16 driver's license or setting up for a job interview. My
17 daughter always asking my wife: I wish Dad was here so he can
18 make things better. And yet all this shame that I brought, my
19 wife still stands here today supporting me, seeing the good
20 that I still have inside of me. And I thank her so much for
21 that.

22 To my mother, who I have not seen in such a long
23 time, I am sorry for hurting you and dragging you into such a
24 shameful situation. I wish that we could have repaired our
25 relationship in a better way. But I hope that one day we will

1 have the opportunity to be able to repair this relationship
2 that is currently broken.

3 Your Honor, I would like to apologize to you and the
4 court. I'm not trying to make any excuse for what I've done.
5 I deeply regret it, but that is not the person that I am right
6 now. Like my attorney said, the seven hours that I had with
7 Dr. Hastings, I learned that with proper counseling and my
8 current medication that I am on, that I have so much more to
9 give to not only society, but to my family also.

10 Your Honor, what I'm asking from you today is for
11 mercy, for a chance for me to one day be able to repair my
12 relationship with my family and to society, to show them that
13 I can -- that I am a better person and that I can stand here
14 and tell you this today because what is different is before, I
15 had no -- I didn't seek any help. I let the Marine pride get
16 in front of it, thinking I can handle my mental health
17 problems on my own, but now I seek any and all help, and I'm
18 willing to do any and all available programs that can help me
19 turn into a better person for society and for the family that
20 I deeply love.

21 THE COURT: Thank you, Mr. Moran.

22 At this time I'll hear any victim allocution and
23 then from the Government.

24 MR. PARRIS: Your Honor, with the Court's
25 permission, I'd like to introduce Trial Attorney Charles

1 Schmitz with the CEOs from Washington, D.C. He's going to
2 offer the victim and victim's parents' statements to the
3 Court.

4 THE COURT: Thank you. Good to have you here.

5 MR. SCHMITZ: Thank you, Your Honor.

6 If it please the Court, I'm just going to read these
7 statements for the record.

8 THE COURT: That's fine. Just don't get reading too
9 fast. It's hard for the court reporter. If people are
10 reading things, they may read fast. That's what I'm told.
11 People who talk fast, it's not good for the court reporter.

12 MR. SCHMITZ: Thank you, Your Honor.

13 Talking over the judge isn't easy for the court
14 reporter either.

15 But I'll do my best. It's not, of course, a
16 perfectly grammatical statement here.

17 So the first statement, Your Honor, is from the
18 victim, and then the second statement will be from the
19 victim's parents.

20 All right. I have been dreading the writing of this
21 letter for two reasons: To avoid, again, opening the several
22 emotions on this situation, and the difficulty of compacting
23 and wording the ways this has affected my life. It wasn't
24 until I realized that this was my chance for my voice to be
25 heard and my offender, whom I was vulnerable to, can hear how

1 this has affected me.

2 When I was only 14 years old, I was attending a
3 private school in Okinawa, Japan. I had never been to any
4 type of public school since I was in kindergarten. I believe
5 the primary reasoning behind my parents' decision to place me
6 in private schools all of my life was to protect me from the
7 gruesome things that had happened in this world.

8 I felt safe in my school, knowing that all members
9 of the church and the school were people whom my family could
10 trust. I was surrounded by people who cared for me and were
11 friendly to me, which is why it never occurred to me that this
12 was happening when the offender became overly friendly with
13 me.

14 It started out with simple iMessage games which then
15 escalated to a text conversation that no longer included
16 games. During our text conversations, he often mentioned how
17 unhappy he was in his marriage, and he took time to explain to
18 me every fight that occurred between him and his wife, even
19 saying he planned to divorce her.

20 He began coming to my school and would bring small
21 things for me like snacks or drinks. Of course, no one
22 suspected anything, even myself, considering this was a man
23 whom my family was close with and trusted. He began telling
24 me that I was beautiful and had a kind and loving heart.

25 From there, everything spiraled. I was this

1 innocent, naive freshman who had never even had her first
2 kiss. And just in a matter of weeks, all my firsts were taken
3 by this man who is 20 years older than me. I was taken by the
4 sweet words and thoughtful acts, the little notes he left in
5 my notebooks, love poems he wrote, gifts that he gave me. I
6 had never experienced this type of attention from a man to
7 whom I was not related.

8 That being said, I was so enthralled and caught up
9 in my feelings, I knew that I was -- I knew what I was feeling
10 was not what I should have felt towards this person; but I had
11 never felt anything like this before, and I didn't know what
12 to do with my emotions. It was as if I felt obligated to
13 return the attention.

14 At the time I had no previous knowledge of his
15 previous offenses. It was not until after the relationship
16 that I found out the truth. I was fooled like everybody else.
17 I thought he was a good person with good intentions, but I
18 realized that I was completely wrong when it was already too
19 late.

20 When I looked back at the relationship, I realized
21 he was quick to anger and would often act unreasonably when he
22 was upset. With this realization, I now wonder what would he
23 do now that he knows I've spoken my truth? If he could
24 attempt to take his own life, what could he do to mine?

25 After my parents discovered the relationship, I was

1 in a very dark place. Knowing that my family knew some parts
2 of the relationship was humiliating to me. As much as
3 possible, I avoided interactions with my mom, dad and brother
4 should they ask me questions about the relationship. I was
5 and am still too ashamed to discuss the events. This
6 destroyed the tight bond I had with them.

7 I felt gross and disgusted with myself for letting
8 something like this happen. I was so dumb and so naive, I
9 allowed myself to be used like an object. I blamed myself for
10 everything that happened. This burden that I put on myself
11 led to the only suicidal thoughts I've ever had. I thought
12 deeply about taking my own life; but realized that if I did
13 so, no one would ever be able to hear my story, justice would
14 never have been served, and he could have easily targeted
15 another young girl.

16 It has been over a year since I heard the news of
17 his being incarcerated. Before this I lived in fear,
18 completely unaware of what he could be capable of. There were
19 times when I was out in public, and I would see someone that
20 looked exactly like him, or I would see someone driving the
21 same car as him. My heart would drop and race, and I feared
22 for my safety. I was a lifeguard; and a few times, someone
23 signed in with the same first or last name, it would ruin my
24 whole day.

25 There are some clothes that I had to get rid of

1 because they brought me back to a bad memory. I used to adore
2 love poems, but now I despise them. When I smell the black
3 ice car freshener, I'm reminded of the biggest mistake of my
4 life. I used to be a very trusting and friendly person who
5 always tried to see the best in everyone. After this, my
6 perspective has changed. I assume that everyone is out to get
7 me. I now feel uncomfortable around any male figures outside
8 of my home, whether it be male teachers, managers or
9 coworkers.

10 I tend to think ahead into the future quite often.
11 These are just some questions that cross my mind: What will I
12 tell my husband if he asks me how my first years in high
13 school were? What do I tell my daughter if she asks me about
14 my first kiss? Most importantly, suppose my offender is
15 sentenced to 15 years in jail? I will only be 32, and he will
16 be roughly 52. Assume I already have children. How do I
17 assure my children's safety and my own when he could be free
18 from jail and seeking revenge? Am I going to live my life in
19 constant fear, the same way I felt before he was imprisoned?
20 Will I be frightened every time I see "unknown caller" on my
21 phone screen?

22 Your Honor, I'll now read the statement from the
23 victim's parents:

24 It is with deep appreciation and relief that this
25 day has finally come. This man who we considered our family,

1 brother, uncle to our kids, a God-changed man, church worker
2 doing service for kids choir and a willing leader to assist in
3 the teen group; this man whom we let in and out of our home,
4 celebrated holidays, birthdays and out-of-town vacations
5 together, and ever present when we were going through rough
6 times with our teenager is now all in front of you because we
7 have been deceived.

8 This man has penetrated not just our family, but our
9 church and its Christian academy. This man is every parent's
10 family and friends worst nightmare. Dressed with a smile,
11 lowly heart and willing service, he can wreck a life, a
12 family, even of his own so cunningly that he can get them
13 defending him.

14 Through him being detained, we have dealt with all
15 the lies, gossip, character assassination, harassment and
16 almost a cyber-bullying of my family with his mother-in-law as
17 his accomplice. May I ask this Court to please grant the
18 sentence which this man deserves for most -- the most for the
19 safety of my child's future and anybody that gets in his way
20 if -- we would be taken -- if this would be taken lightly.

21 Thank you, Your Honor.

22 THE COURT: Thank you. I'll hear from the United
23 States on the 3553(a) factors.

24 MR. PARRIS: Your Honor, starting at the first
25 factor, the nature and circumstances of the offense. I know

1 the Court has read the PSR, but I'd like to go through and
2 give the Government's view of how the facts of this case
3 relate to also the characteristics of the defendant.

4 Looking at paragraph 11 of the pretrial sentencing
5 report, it identifies that at the time of this offense -- and
6 as you know, he was a former Marine -- he was in Okinawa with
7 the Veteran Affairs Transition Systems program there at the
8 air base in Okinawa, and that's where he met the victim and
9 her family. He joined the church there. They became close
10 family friends, and a trusting relationship began.

11 Paragraph 12 that we look at when it comes to the
12 enticement. The defendant used the trust that he had gained
13 through that relationship with that family and the victim and
14 slowly lured her into the sexual relationship that lasted
15 eight to six months. And if you look at the facts, if this
16 was a teenage couple, this would be sweet. But if you look at
17 all the information we have now and including the findings of
18 Mr. Hastings, paragraph 12 sounds more like enticement and
19 grooming to prepare her for what was ultimately the goal of a
20 sexual act and sexual conduct. He even utilized text messages
21 with sweet messages, kissy faces, even utilized Valentine's
22 Day, saying: Maybe I'll get a kiss. And as the Court knows
23 from reading this, it grew from there, unfortunately.

24 And so that is the question: Is this a
25 relationship, a trusting relationship with a minor, or is it

1 grooming and enticement? And the Government would offer that
2 it's grooming and enticement, especially when looking at the
3 statements on page 18 of Dr. Hastings' report.

4 "When asked about the potential negative effects a
5 child can experience from this type of relationship, Mr. Moran
6 was able to identify problems in future relationships and
7 intimacy along with more serious concerns, such as shame,
8 depression, anxiety and suicide."

9 So he was aware of the damage he could do to her
10 while all of this was happening in his own words.

11 We look at paragraphs 13 and 14. It clearly
12 demonstrates the repetitive sexual interactions between the
13 defendant and the victim in this case. And the victim
14 indicated at one point when they saw each other three -- three
15 times a week, they were engaged in sexual conduct and acts.
16 So this was a repetitive sexual acts with a minor.

17 And I would offer to the Court, it wasn't
18 voluntarily abandoned. It was abandoned once there was the
19 fear that there would be an investigation and arrest and
20 prison time.

21 But as paragraphs 13 and 14 show, he would pick her
22 up from school. He would take her on trips where the sexual
23 acts took her, and he would disguise it, once again, as a
24 relationship to keep these sexual acts going.

25 Turning to paragraphs 16 and 17, they even

1 utilize -- and by his request, and he would coach her on how
2 to use the line chat program in SnapChat to avoid detection so
3 they could freely talk about these sexual acts in this
4 relationship without getting caught. At one point he even
5 provided her an iPhone, once again, to keep it secret from her
6 mom.

7 Paragraph 18, while it doesn't necessarily discuss
8 the actual sexual acts, the Government believes it is very
9 important into the nature and the true nature of this
10 relationship and why the acts were more grooming than a caring
11 relationship.

12 If you read through this -- and I know you have --
13 he did all this to save himself. Paragraph 18 documents what
14 he did to save himself. He coached her into lying to her
15 parents, faking suicidal intentions so her parents would stop
16 asking questions. He, on numerous occasions, asked her to run
17 away from the only people in her life that truly loved her,
18 provided for her. He also asked her at one point to put
19 vinegar inside of her to destroy any sperm evidence that
20 investigators could collect. And even her response was:
21 Wasn't that -- wouldn't that hurt me?

22 But that wasn't his concern. His concern was
23 getting caught. Paragraph 18 shows this was not a loving
24 relationship. It was a sexual relationship with a minor. And
25 18 shows the length he was willing to go and have her go to

1 protect him. Once again, this was not an abandoned crime. It
2 stopped when it was discovered by her father.

3 Looking at the history and characteristics of the
4 defendant, he only has one prior conviction. And focusing on
5 it just briefly, it shows a pattern, once again, of sexually
6 illicit behavior, and we'll leave it at that. He even went to
7 prison or jail for 90 days for that illicit sexual conduct.
8 And after being released, another illicit sexual conduct began
9 again with a minor in this case.

10 I would also note, once again, the statement I've
11 already read in Dr. Hastings' report, he knew it was wrong.
12 He knew it could damage the victim. And he went forth and did
13 it any way.

14 Looking at the factors, the need to impose a
15 sentence that reflects the seriousness of the offense, to
16 promote the respect for the law, provide just punishment. As
17 you've heard from the victim impact statement and her parents,
18 and even, once again, the discussions within Dr. Hastings'
19 report, it will have a long impact on the victim and her
20 family that she will have to work through and they will have
21 to work through together.

22 It is a serious offense. Six months of sexual acts
23 and conduct, including making videos and pictures with a minor
24 who was 14 and then turned 15 years old.

25 In her own words, the victim told you how she is

1 struggling with this, and it's not going to go away fast. Her
2 fears about whether there will be retaliation, her parents'
3 fears and her own fears if this could happen to another minor
4 or child.

5 Based on the 3553(a) factors, the facts of this
6 case, all these factors, based on the victim's wishes and her
7 family's wishes, we believe that a sentence between 40 to 50
8 years is appropriate.

9 The guideline range is for life. He did come in and
10 plead guilty and save a trial, and so that would take in
11 effect that factor. But this crime, when you look at it and
12 you look at everything, looks more like grooming than a caring
13 relationship, and that is a danger to the public. It may not
14 be a danger directly to the victim anymore, but it could, if
15 the defendant is released in a shorter period of time, be a
16 danger again to the public and another minor.

17 Thank you, Your Honor.

18 THE COURT: How about the topic of restitution?

19 MR. PARRIS: Yes, Your Honor. The victim and her
20 family are asking for \$20,000, and that's based on the job
21 loss of her mother, having to stay home and be with her and be
22 with the family in this time, so that is what the number is
23 based on at this time.

24 If the Court would like more to support the \$20,000
25 requested, we would request the 90 days to be reserved to be

1 able to get more information for the Court.

2 THE COURT: Have you had any discussions with her
3 about counseling and -- for the victim?

4 MR. PARRIS: Yes, Your Honor. We have had
5 discussions. She's not currently now in therapy. It's one of
6 those processes where not all victims immediately start in
7 therapy. So no. At this time, to our knowledge, she is not
8 in therapy, but this is -- excuse me.

9 She may have had a few sessions, but she is not in
10 long-term therapy at this moment. Their request for
11 restitution is based on the need of the mother to not be able
12 to work, to be able to stay home with the victim at this time
13 and her family.

14 THE COURT: All right. Ms. Salmon, what's your
15 position on restitution?

16 MS. SALMON: Your Honor, in my most recent discovery
17 with the Government as to restitution was simply about the
18 number. This is the first that I'm hearing about what the
19 number is based on. It would certainly be the defense's
20 position that if the family is requesting damages or
21 restitution damages that are premised upon loss of earnings
22 for a parent, we'd like to see that documented. And to the
23 extent that more appropriate damages, such as mental health
24 counseling or other damages for the actual victim would be
25 presented, we'd like 90 days to try to figure that out as

1 well.

2 Your Honor, Mr. Moran certainly wants to comply with
3 restitution provisions in order to try to assist the victim in
4 the case, but we would want to make sure that the benefit was
5 flowing to the victim.

6 THE COURT: Thank you.

7 Any other response to either the victim allocution
8 or the Government's position on 3553(a)?

9 MS. SALMON: Your Honor, obviously we have a very
10 large gulf between the 15 years that the defense has said is
11 greater -- anything above 15 years would be greater than
12 necessary and 40 years at the bottom that the Government is
13 recommending. We maintain our position that a sentence
14 between 10 and 15 years is sufficient but not greater than
15 necessary.

16 I do -- I did not mention this in the initial
17 3553(a) presentation. But, Your Honor, Mr. Moran has
18 cooperated with Harnett County law enforcement. I reached out
19 to the ATF task force officer in an attempt to get a statement
20 from him. I did not want to subpoena him because I work with
21 him every day, and I knew that he would not like that very
22 much. I was not able to get that in writing.

23 What happened, as I said in the motion, Your Honor,
24 was an inmate actually overdosed that was in Mr. Moran's pod.
25 It appears that those drugs may have come from inside the

1 jail. Mr. Moran approached me the day following the overdose
2 death and said he would like to give information to the
3 internal investigations officer about what they were saying
4 about where those drugs were coming from. He did so, and the
5 officer has told me that they believe that to be correct.

6 I think we may be hitting a little bit of a snag
7 because the SBI has now taken over that investigation, so
8 Harnett County Sheriff's Department is no longer
9 investigating, and I do not -- I told them that Mr. Moran is
10 still available.

11 But I did want Your Honor to know that because
12 this -- I told him he does not have a 5K provision in his plea
13 agreement. There's no cooperation credit. He still very much
14 wanted to do the right thing. People are dying because of
15 illicit drugs in pretrial detention facilities in county jails
16 right now, as Your Honor knows. And even this week he
17 provided some additional information to his pod officer about
18 marijuana coming in through a lot of the same people, and he
19 was rewarded with a very swift trip to the hole himself, so I
20 did want to mention that.

21 I do want to make sure that the record accurately
22 reflects what Dr. Hastings said about Mr. Moran's recognition
23 of the damage to the victim. If you read the two paragraphs
24 in toto, he said that he now recognizes the harm to the victim
25 as he was working through this process and talking about it

1 with Dr. Hastings.

2 Even if he didn't understand it at the time, he's
3 now had plenty of time to understand that this relationship
4 and sexual conduct that he had rationalized harmed a person
5 very deeply. And that show of empathy now and that
6 recognition of that harm, Your Honor, we ask that not be used
7 against him. That is exactly what we want defendants to do,
8 is to try to step into the shoes of their victim and see how
9 they have harmed them. We just beg Your Honor to show him
10 mercy and to not impose a sentence in excess of 15 years.

11 Thank you, sir.

12 THE COURT: Thank you.

13 (Pause in the proceeding.)

14 THE COURT: Mr. Moran, the Court recognizes its
15 obligation to impose a sentence sufficient but not greater
16 than necessary to comply with the purposes set forth in the
17 statute.

18 I have considered all arguments that your lawyer has
19 made, both here in court and in the motion that she submitted.
20 I have considered the report of Dr. Hastings. I have
21 considered your statement. I have considered the victim
22 allocution. I have considered the position of the United
23 States. I have considered the advisory guideline range.

24 Among other things, I'm to consider the nature and
25 circumstances of the offense and the history and

1 characteristics of the defendant, the need for the sentence
2 imposed to reflect the seriousness of the offense, to promote
3 respect for the law and to provide just punishment; the need
4 for the sentence imposed to deter others who might choose to
5 engage in the criminal behavior that brings you here; the need
6 for the sentence imposed to protect the public from further
7 crime by you; the need for the sentence imposed to provide you
8 with needed educational or vocational training, medical care
9 or other correctional treatment in the most effective manner;
10 the need to avoid unwarranted sentencing disparities.

11 The statute lists numerous other factors. I have
12 considered all those factors, although I won't mention each
13 one individually.

14 As for the nature and circumstances of the offense,
15 you did plead guilty to two offenses, sexual abuse of a minor
16 and enticement of a minor. The crimes are serious crimes, as
17 detailed in the PSR, and as we've discussed here today and as
18 the victims talked about; in particular, both parents and the
19 child.

20 You were in a position of trust with respect to that
21 child. She was a ninth grader apparently at a Baptist school.
22 You were working there. You had the trust of her family. You
23 groomed her for this effort to obtain sexual gratification. I
24 won't call it a relationship because it's not a relationship.
25 At the time you were a much, much older man, a person who had

1 served in the Marine Corps who absolutely knew better than to
2 sexually exploit a child who is a freshman in high school.

3 And I've considered the arguments associated with
4 the issue, and I'm certainly going to take into account both
5 your service in the Marine Corps as well as the PTSD and all
6 the information contained in Dr. Hastings' report in imposing
7 the sentence, but the offense conduct took place over months
8 where you say you were at a low point psychologically. But I
9 would submit that you knew it was wrong.

10 And part of what evidence there is that you knew it
11 was wrong was the obstructive conduct when the conduct came to
12 light, right, telling the child to destroy evidence. And all
13 the conduct that preceded it was terrible. It will be very
14 difficult for that child to ever have a normal, healthy
15 relationship with a husband. It just will.

16 And you took things from her that she can never get
17 back in terms of, as she said in her allocution, people can
18 view the world with a trusting eye or with a distrustful eye,
19 and you have ensured that she will look at the world with a
20 distrusting eye because someone in a position of trust and
21 responsibility and a person who had a relationship with her
22 family used that relationship to sexually exploit her, to
23 groom her, to try and then get her to lie about it, to
24 participate in the production of child pornography. That's
25 what it is, so it's incredibly serious offense behavior.

1 I've taken into account the reality that you did
2 have the injury in Afghanistan and didn't get mental health
3 treatment. But you did have this situation where you
4 obviously had engaged in this adulterous relationship, and
5 your Marine Corps career ended, and you didn't get
6 psychological treatment.

7 But I think the request of your counsel for the memo
8 or the motion at Docket Entry 72 asks for a sentence of 120
9 months. She said no more than 180 months here in court. And
10 as part of the rationale, there's a suggestion that you're a
11 low risk of recidivism, likely to be successful in treatment,
12 no indication of paraphilia, honest and remorseful.

13 I'll accept the idea that you're remorseful.
14 Certainly, the doctor says no indication of paraphilia, and
15 I'll certainly make recommendations about treatment. Low risk
16 of recidivism, the doctor says that. Focused in particular on
17 sexual recidivism, not exclusively, but I also have to weigh
18 just punishment for this seriously wrong conduct over the
19 course of months sexually exploiting a little girl who was a
20 freshman in high school, and to do it repeatedly; and not just
21 sexual exploitation, but the grooming and the enticement and
22 the videos and the photographs.

23 I've taken into account the argument that your
24 lawyer makes about not having unwarranted sentencing
25 disparities and the citation to the James Peele sentence.

1 Each case is different, and the attempted distinction by your
2 defense lawyer saying that the only thing that's different is
3 that there were texts and pictures in this case. I, of
4 course, did not sentence that individual. Each individual
5 case is different. I will submit this case is terrible, and I
6 don't think you're similarly situated with Mr. Peele.

7 I've taken into account the arguments associated
8 with your tumultuous childhood, which are referenced. And I
9 recognize that -- and the doctor talked about it, leaving the
10 Dominican Republic and then being in a bad situation with your
11 father in terms of how he interacted with you and his
12 emotional and physical abuse and his disciplining of you with
13 respect to academic performance or lack of performance and him
14 being unhappy about your decision to join the Marines. And
15 I've taken all that into account, but I don't think that that
16 warrants the extreme downward variance your counsel has asked
17 for.

18 Again, the guidelines are just one of many factors
19 I'm to consider. I've got to balance this very serious nature
20 of the criminal offense conduct that took place over a long
21 period of time that I think you knew better. And that --
22 balance that, take into account your documented PTSD and the
23 other things that the doctor says about you in the report, I
24 recognize. I read it all, that it references at page 22 of
25 the report, post-traumatic stress disorder; major depressive

1 disorder, recurrent, mild to moderate; alcohol use disorder,
2 in sustained remission; avoidant, obsessive-compulsive, and
3 borderline personality traits. Again, I've taken into account
4 his assessment of risk of sexual reoffending.

5 I take what Ms. Salmon said about -- that
6 Dr. Hastings' report associated with how a victim would
7 perceive this. Even accepting that, I think it's clear that
8 you knew it was wrong when you were doing this, because you're
9 sneaking around with a 14-year-old girl. And so you knew it
10 was wrong and you knew it was exploitive, and you did it
11 anyway. And you need to be punished for that, and you will
12 be; not as much as the Government has asked for, and certainly
13 not what your defense lawyer has asked for.

14 Having fully considered the entire record in the
15 case, all of the arguments of counsel, both in writing and
16 here in court, it's the judgment of the Court that Emilio R.
17 Moran is hereby committed to the custody of the Bureau of
18 Prisons to be imprisoned for 180 months on Count 2 and a term
19 of 420 months on Count 3 to be served concurrently.

20 The Court has considered all the 3553(a) factors in
21 imposing this sentence, all the arguments, including the
22 diagnosed post-traumatic stress disorder, the report of
23 Dr. Hastings, the victim allocution, the positive and
24 negatives in Mr. Moran's life, including his service in the
25 Marine Corps and all of the commendations he received as a

1 Marine.

2 Pursuant to the plea agreement, Counts 1, 4, 5, 6,
3 7, and 8 are dismissed.

4 Upon release, you'll be placed on supervised release
5 for 10 years. This consists of 10 years on Count 2 and 10
6 years on Count 3 to run concurrently.

7 After carefully considering 18 U.S.C., Section
8 3583(d) and 18 U.S.C., Section 3553(a), the Court now imposes
9 the mandatory and standard conditions of supervision adopted
10 in the Eastern District of North Carolina as referenced in
11 Standing Order 21-SO-5. The Court finds that those conditions
12 are reasonably related to the factors in 3553(a), involve no
13 greater depravation of liberty than necessary under 3553(a),
14 and are consistent with relevant Sentencing Commission policy
15 statements as described in *United States v. Singletary*, 984
16 F.3d 341 (4th Cir. 2021).

17 You shall comply with the following special
18 conditions which the Court imposes based on statutory
19 requirements, the nature of the offenses of conviction, your
20 history, your mental health needs, the need to rehabilitate,
21 the need to monitor you and the payment of restitution and to
22 adequately supervise you.

23 One, you shall participate in a program of mental
24 health treatment as directed by probation.

25 Two, you shall participate in a vocational training

1 program as directed by probation.

2 Three, you shall not incur new credit charges or
3 open additional lines of credit without the approval of the
4 probation office due to the anticipated restitution order.

5 Four, you shall provide the probation officer with
6 access to any requested financial information due to the
7 anticipated restitution order.

8 Five, you shall cooperate in the collection of DNA
9 as directed by probation.

10 Six, you shall have no direct or indirect contact at
11 any time for any reason with the victim, the victim's family
12 or affected parties in this matter unless provided with
13 specific written authorization in advance by the probation
14 officer.

15 Seven, you shall submit to psychosexual evaluation
16 by a qualified mental health professional who's experienced in
17 evaluating sex offenders and is approved by U.S. Probation.

18 Eight, you shall participate in a sex offender
19 treatment program as directed by probation, and you shall
20 comply with and abide by all rules and requirements and
21 conditions of the treatment program until discharged. You
22 shall take medications as prescribed by the treatment
23 provider.

24 Nine, at the direction of probation, you shall
25 submit to a physiological test which may include, but not

1 limited to, polygraph exams or other tests and monitor your
2 compliance with probation or supervised release and treatment
3 conditions.

4 Ten, your residence and employment shall be approved
5 by probation. Any proposed change in residence or employment
6 must be provided to the probation officer at least 10 days
7 before the change and preapproved before the change may take
8 place.

9 11, you must comply with the requirements of the Sex
10 Offender Registration and Notification Act as directed by
11 probation and Bureau of Prisons or any state sex offender
12 registration agency in the location where you reside, work,
13 are a student or are convicted of a qualifying offense.

14 12, to ensure compliance with supervision, you shall
15 submit to unannounced searches of any computer or computer
16 equipment, including mobile phones, which in the discretion of
17 probation may include the use of computer monitoring
18 technology, computer search or analysis software and copying
19 of all data from the device and external peripherals. Such
20 examination may require the removal of devices from your
21 possession for the purpose of conducting a thorough
22 inspection. The Court imposes that condition given the nature
23 of the offense conduct in this case.

24 At the direction of probation, you shall consent to
25 the installation of systems or software that will allow

1 probation or a designee to monitor computer use on any
2 computer that the defendant owns or is authorized to use. You
3 shall pay the costs of the monitoring. Again, this condition
4 is imposed in light of the nature of the offense conduct.

5 You shall not use, possess or control any
6 computer-based counter forensic tools. You shall not use or
7 have installed any programs specifically and solely designed
8 to encrypt data, files, folders, or volumes of any media. You
9 shall, upon request, immediately provide Probation Office with
10 any and all passwords required to access data compressed or
11 encrypted for storage by any software.

12 You shall submit to a search of your person, house,
13 residence, vehicles, papers, computer and other electronic
14 communication or data storage devices or media and effects at
15 any time with or without a warrant. A search may be conducted
16 by any law enforcement officer or probation officer with
17 reasonable suspicion concerning a violation of conditions of
18 supervision or unlawful conduct by you and by any probation
19 officer in the discharge of the officer's supervision
20 function.

21 You shall support your children. You must make
22 restitution in accordance with 18 U.S.C., Section 3663(a) and
23 3663 and any other statute authorizing restitution. Payment
24 of restitution will be due and payable in full immediately
25 once the Court enters the order of restitution. However,

1 because I do not anticipate you'll be able to pay in full
2 immediately, the special assessment and restitution can be
3 paid through the Inmate Financial Responsibility Program.
4 You'll pay a minimum of \$25 per quarter through the Inmate
5 Financial Responsibility Program. Having considered your
6 financial resources and ability to pay, the Court orders that
7 any balance still owed at the time of release shall be paid in
8 installments of \$200 a month beginning 60 days after your
9 release. At the time of your release, the probation officer
10 shall take into account your ability to pay the restitution
11 ordered and shall notify the Court of any needed modification
12 or payment schedule.

13 The drug testing conditions under 18 U.S.C., Section
14 3608 is suspended based upon the Court's determination that
15 you pose a low risk of future substance abuse. You shall pay
16 a special assessment of \$200.

17 I'm not going to order an assessment under the
18 Justice for Victims of Trafficking Act of 2015 due to an
19 inability to pay on top of the anticipated restitution order.
20 I will impose restitution but will delay imposition of that
21 order until final determination of the victim's losses can be
22 made. The delay in imposition shall not exceed 90 days from
23 today's date as set forth in 18 U.S.C., Section 3664(d)(5).

24 I expect counsel to work with one another to see if
25 there can be a joint order. If there cannot, then I want the

1 order prior to that 90-day period so we can have a hearing and
2 I can determine restitution. I'm not going to impose a fine
3 in light of the restitution that I anticipate entering in this
4 case.

5 I do think I've properly calculated the advisory
6 guideline range in this case, but I announce pursuant to *U.S.*
7 *v. Gomez-Jimenez*, 750 F.3d 370 (4th Cir. 2014) and *U.S. v.*
8 *Hargrove*, 701 F.3d 156 (4th Cir. 2012), that I'd impose the
9 same sentence as an alternative variant sentence if I have, in
10 any way, miscalculated the advisory guideline range.

11 In imposing this sentence, I've carefully and
12 thoughtfully considered each word each lawyer has said to me.
13 I have not parroted back each word each lawyer has said to me.
14 Just as an Appellate Court does not parrot back each word that
15 a lawyer says to the Appellate Court in their brief doesn't
16 mean the Appellate Court hasn't considered what they've said.
17 If they don't do what the appellant or appellee want, it means
18 they've rejected the argument after having thoughtfully
19 considered it.

20 I have thoughtfully considered every word each
21 lawyer has said to me. I've imposed a sentence different than
22 what each lawyer has said to me. The reason I've done it is
23 because I balance the 3553(a) factors differently than they
24 propose that I balance them, and I explained why. And in
25 doing that, I have emphasized what I found to be significant

1 under 3553(a) and discounted what they propose that I find to
2 be significant.

3 I recommend mental health evaluation and treatment.
4 I recommend -- did you want any other sort of treatment?

5 MS. SALMON: Yes, Your Honor. Based on
6 Dr. Hastings' finding that he was in alcohol use disorder
7 remission, we'd ask for substance abuse treatment.

8 THE COURT: All right. I recommend the most
9 intensive substance abuse treatment. I recommend vocational,
10 educational opportunities so Mr. Moran can use his
11 intelligence to develop skills so that when he gets out, he
12 can live in a law-abiding and productive way.

13 Mr. Moran, you can appeal your conviction if you
14 believe that your guilty plea was somehow unlawful or
15 involuntary or if there's some other fundamental defect in the
16 proceeding that was not waived by your guilty plea.

17 You also have a statutory right to appeal your
18 sentence under certain circumstances, particularly if you
19 think your sentence is contrary to law.

20 However, you did enter into a plea agreement that
21 contains an appellate waiver. In light of your sentence, I
22 believe you've waived your right to appeal.

23 If you believe the waiver is unenforceable or
24 inapplicable for any reason, you can present that theory to
25 the Appellate Court.

1 With few exceptions, any Notice of Appeal must be
2 filed within 14 days of the judgment being entered on the
3 docket in your case.

4 If you're unable to pay the cost of an appeal, you
5 may apply for leave to appeal *in forma pauperis*.

6 If you so request, the Clerk of Court will prepare
7 and file a Notice of Appeal on your behalf.

8 I do thank counsel for their work.

9 Is there anything else from the United States?

10 MR. PARRIS: No. Thank you, Your Honor.

11 THE COURT: Anything else from the defense?

12 MS. SALMON: Your Honor, Mr. Moran would request
13 that you make a recommendation for Butner.

14 THE COURT: I will recommend that he serve his
15 sentence at Butner.

16 MS. SALMON: Thank you, sir. Nothing further.

17 THE COURT: All right. That'll conclude the matter
18 involving Mr. Moran. Good luck to you, sir.

19 We'll be in recess until 9:00 a.m. tomorrow.

20 * * *

21 (The proceedings concluded at 3:30 p.m.)
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1 UNITED STATE DISTRICT COURT
2 EASTERN DISTRICT OF NORTH CAROLINA
3
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5 CERTIFICATE OF OFFICIAL REPORTER
6

7 I, Amy M. Condon, CRR, RPR, CSR, Federal Official
8 Court Reporter, in and for the United States District Court
9 for the Eastern District of North Carolina, do hereby certify
10 that pursuant to Section 753, Title 28, United States Code,
11 that the foregoing is a true and correct transcript of the
12 stenographically reported proceedings held in the
13 above-entitled matter and that the transcript page format is
14 in conformance with the regulations of the Judicial Conference
15 of the United States.
16
17

18 Dated this 22nd day of September, 2021.
19
20

21 /s/ Amy M. Condon
22 Amy M. Condon, CRR, CSR, RPR
23 U.S. Official Court Reporter
24
25